

TORONTO SUBURBAN R.W. CO. v. BEARDMORE—BRITTON, J.—
MAY 12.

Contract—Electric Railway—Agreement to Build through Yard of Tanning Company—Consideration—Right to Maintain Railway Constructed without Objection—Validity of Agreement—Authority of Managing Director of Company—Evidence—Corroboration—Evidence Act, R.S.O. 1914 ch. 76, sec. 12.]—Action for a declaration that the plaintiffs are entitled to construct, operate, and maintain their railway through the defendants' land at Acton, in terms of an agreement alleged to have been made between the plaintiffs and one Walter D. Beardmore, now deceased, who was a member of the defendant firm, Beardmore & Co., and managing director of the defendant the Acton Tanning Company, and for the specific performance of that agreement, and for a declaration that the defendants had no right to compensation or damages in respect of land of the defendants taken by the plaintiffs or land injuriously affected; and, in the alternative, for \$150,000 damages. The alleged agreement was that the plaintiffs should change the situs of their line through the village of Acton, adopting a more expensive route, through the defendants' yard, and, in consideration thereof, that the plaintiffs would not be required to pay anything as compensation for the land taken or damages for the operation and maintenance of the railway. The action was tried without a jury at Toronto. BRITTON, J., in a written judgment, finds that the plaintiffs, in consideration of the agreement mentioned, resurveyed their line, adopted the more expensive route, and built their railway according to it; that Walter D. Beardmore had authority to make the agreement; and that the railway was built through the defendants' yard without any objection or protest on their part. The learned Judge was of opinion that sec. 12 of the Evidence Act, R.S.O. 1914 ch. 76, requiring corroboration in an action against the representatives of a deceased person, had no application. Judgment for the plaintiffs with costs. Wallace Nesbitt, K.C., and Christopher C. Robinson, for the plaintiffs. H. M. Mowat, K.C., for the defendants.